

Edwin J. Wilson, Jr. (Bar No. 48881)  
Kurt C. Wendlenner (Bar No. 238434)  
**WENDEL, ROSEN, BLACK & DEAN LLP**  
1111 Broadway, 24th Floor  
Post Office Box 2047  
94604-2047 Oakland, CA 94607-4036  
Telephone: (510) 834-6600  
Fax: (510) 834-1928  
  
Attorneys for Defendant  
Port of Oakland

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

TERRY BROWN,

Plaintiff,

vs.

PORT OF OAKLAND,

Defendant.

Case No. C 08-02358SI

**DECLARATION OF KURT C.  
WENDLENNER IN SUPPORT OF  
MOTION TO DISMISS PURSUANT TO  
FED. R. CIV. P. 12(b)(6); AND IN THE  
ALTERNATIVE, MOTION FOR  
SUMMARY JUDGMENT PURSUANT TO  
FED. R. CIV. P. 56(c)**

**Date: July 25, 2008  
Time: 9:00 a.m.  
Courtroom: 10 – 19<sup>th</sup> Floor**

I, Kurt C. Wendlenner, declare as follows:

1. I am an attorney at law duly licensed to practice before all of the courts of the State of California and an associate at Wendel, Rosen, Black & Dean LLP. I am counsel for plaintiff Port of Oakland (the “Port”). The following statements are made upon my personal knowledge unless otherwise indicated. If called, I would competently testify to the following matters.

2. In the instant action, Plaintiff Terry Brown filed his charge with the Equal Employment Opportunity Commission on January 30, 2008. Equal Employment Opportunity Commission Intake Questionnaire, attached hereto as **Exhibit A**; EEOC Charge of Discrimination, attached hereto as **Exhibit B**; Typed EEOC Charge of Discrimination Attachment, attached hereto as **Exhibit C**.

*DECLARATION OF KURT C. WENDLENNER IN  
SUPPORT OF MOTION TO DISMISS - Case No. C 08-  
02358SI*

1           **3.**       The Equal Employment Opportunity Commission dismissed Browns charge as  
2 being “not timely filed with the EEOC . . .” (EEOC Dismissal and Notice of Rights, attached  
3 hereto as **Exhibit D.**)

4           **4.**       Brown filed his Complaint on May 7, 2008. The Port was served with Brown’s  
5 Complaint via US Mail on June 2, 2008.

6           I declare under penalty of perjury under the laws of the State of California that the  
7 foregoing is true and correct.

8       Dated: June 20, 2008

/s/ Kurt C. Wendlenner  
Kurt C. Wendlenner

Wendel, Rosen, Black & Dean LLP  
1111 Broadway, 24th Floor  
Oakland, CA 94607-4036

# EXHIBIT A



**EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
INTAKE QUESTIONNAIRE**

55 Exhibits ①

Please immediately complete the entire form and return it to the U.S. Equal Employment Opportunity Commission ("EEOC"). REMEMBER, a charge of employment discrimination must be filed within the time limits imposed by law, generally within 180 days or in some places 300 days of the alleged discrimination. Upon receipt, this form will be reviewed to determine EEOC coverage. Answer all questions as completely as possible, and attach additional pages if needed to complete your response(s). Incomplete responses may delay the processing of your questionnaire. If you do not know the answer to a question, answer by stating "not known." If a question is not applicable, write "n/a."

(PLEASE PRINT)

**1. Personal Information**

Last Name: Brown, First Name: Terry MI: Don  
 Street or Mailing Address: P.O. Box 5279 Apt Or Unit #: \_\_\_\_\_  
 City: Oakland County: ALA State: CA Zip: 94605  
 Phone Numbers: Home: (510) 967-6872 Work: ( ) 0  
 Cell: 510 967-6872 Email Address: 0  
 Date of Birth: 10-9-58 Sex: Male ☒ Female \_\_\_\_\_ Race: Black  
 National Origin / Ethnicity \_\_\_\_\_ Do You Have a Disability? ☒ Yes No

Provide The Name Of A Person We Can Contact If We Are Unable To Reach You:

Name: Carl Brown Relationship: Brother  
 Address: 915 Glasier Court City: Vallejo State: CA Zip Code: 94591  
 Home Phone: 707 556-3379 Other Phone: 510 427-8816

I believe that I was discriminated against by the following organization(s): (Check those that apply)

Employer ☒ Union \_\_\_\_\_ Employment Agency \_\_\_\_\_ Other (Please Specify) \_\_\_\_\_

**2. Organization Contact Information**

Organization #1 Name: Port of Oakland  
 Address: P.O. Box 2064 County: ALAMEDA  
 City: Oakland State: CA Zip: 94604 Phone: ( ) \_\_\_\_\_  
 Type of Business: Public Services Job Location if different from Org. Address: \_\_\_\_\_  
 Human Resources Director or Owner Name: James E. Allen Jr Phone: 510 834-4591  
627-1100  
 Number of Employees in the Organization at All Locations: Please Check (✓) One  
 Less Than 15 \_\_\_\_\_ 15 - 100 \_\_\_\_\_ 101 - 200 \_\_\_\_\_ 201 - 500 \_\_\_\_\_  
More 500

Organization #2 Name: \_\_\_\_\_  
 Address: \_\_\_\_\_ County: \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_ Phone: ( ) \_\_\_\_\_

Type of Business: \_\_\_\_\_ Job Location if not at Org. Address: \_\_\_\_\_

Human Resources Director or Owner Name: \_\_\_\_\_ Phone: \_\_\_\_\_

Number Of Employees In The Organization At All Locations: please check (✓) one

Less Than 15

15 - 100

101 - 200

201 - 500

More 500

## 3. Your Employment Data (Complete as many items as you can)

Date Hired: MAY of 95 Job Title At Hire: Semi Skilled LaborerPay Rate When Hired: 3,000 monthly Last or Current Pay Rate: about 4,000Job Title at Time of Alleged Discrimination: Semi Skilled LaborerName and Title of Immediate Supervisor: Julian Valero / Via John KachmsIf Applicant, Date You Applied for Job yr 1995 Job Title Applied For: Semi Skilled Laborer

## 4. What is the reason (basis) for your claim of employment discrimination?

FOR EXAMPLE, if you are over the age of 40 and feel you were treated worse than younger employees or you have other evidence of discrimination, you should check (✓) AGE. If you feel that you were treated worse than those not of your race or you have other evidence of discrimination, you should check (✓) RACE. If you feel the adverse treatment was due to multiple reasons, such as your sex, religion and national origin, you should check all three. If you complained about discrimination, participated in someone else's complaint or if you filed a charge of discrimination and a negative action was threatened or taken, you should check (✓) RETALIATION.

☒ Race ☒ Sex ☒ Age ☒ Disability ☒ National Origin ☒ Color ☒ Religion ☒ Retaliation ☐ Pregnancy

Other reason (basis) for discrimination (Explain): Right to work in safe environment 1998  
A Supervisor totally unhappy with his position. Assaulted twice nothing was done

## 5. What happened to you that you believe was discriminatory? Include the date(s) of harm, action(s) and include the name(s) and title(s) of the persons who you believe discriminated against you. (Example: 10/02/06

Written Warning from Supervisor, Mr. John Soto)

A) Date: 2000 thru today Action: after taking or accepting a position 1997from immediate Foreman, the Supervisor didn't want me to take positionName and Title of Person(s) Responsible: Supervisors: Julian Valero Via John KachmsB) Date: from on going today Action: In 2000 I went to file a complaintwithin the Port of Oakland which was also denied.Name and Title of Person(s) Responsible: Foreman: Bill Edwards, (for threatening me).Describe any other actions you believe were discriminatory. Sab + CarcareI was physically assaulted. 1998 nothing was done.1999 I was mentally assaulted and my lifewas threatened by Victor Rodriguez. a friend ofJohn Kachms. John Kachms hired Victor R.after it was hit by Rickie Lopp. John seenhow afraid I was. nothing was done. John K. brokenthe Policy Law from the Port of Oakland and hired this man(Attach additional pages if needed to complete your response.) to put more fear in my life

6. What reason(s) were given to you for the acts you consider discriminatory? By whom? Title?

John Kachins told me himself when I got hired at the Port of Oakland. He said, Terry I know what you're capable of and what you can do. He said I can fly airplanes & have my own, I deep sea dive. And hear I am stuck down here. I didn't realize what he was saying.

7. Name and describe others who were in the same situation as you. Explain any similar or different treatment. Who was treated worse, who was treated better, and who was treated the same? Provide race, sex, age, national origin, religion, and/or disability status of comparator if known and if connected with your claim of discrimination. Add additional sheets if needed.

Full Name	Job Title	Description
1. Eubor Gilbert SP	Gardner/Semi-Skilled	Retired, then rehired
2. all employees at harbor	Laborer	with only had entrance to building not I.
3. Jerry Bizzle	Supervisor	John K. was removed from his duty. I had to be removed.

Answer questions 8-10 only if you are claiming discrimination based on disability. If not, skip to question 11.

8. Please check all that apply: I exposed who cause my injuries. but yet it takes the death from a person that can't defend himself.

Yes, I have an actual disability ☒ I mentally barely made it feels very hard to live.

I have had an actual disability in the past ☒ it feels very hard to live.

No disability but the organization treats me as if I am disabled to live. ☒ or want to live.

9. If you are alleging discrimination because of your disability, what is the name of your disability? How does your disability affect your daily life or work activities, e.g., what does your disability prevent or limit you from doing, if anything? (Example: lifting, sleeping normally, breathing normally, pulling, walking, climbing, caring for yourself, working, etc.)

Mental disorder, totally depressed and everything the doctor has started. Feel like I'm living a lost life. I didn't mean to quit my job. I have lots of back pain and pain threw out my body. I was admitted to Merritt hospital (suicide thoughts).

10. Did you ask your employer for any assistance or change in working condition because of your disability?

YES ☐ NO ☒ The doctor requested but I didn't want to leave the Airport.

Did you need this assistance or change in working condition in order to do your job?

YES ☒ NO ☐ I requested transfer but not away from Airport.

If "YES", when? 1st 997 To whom did you make the request? Provide full name of person \_\_\_\_\_ How did you ask (verbally or in writing)? Verbally

Describe the assistance or change in working condition requested?

After Merritt Miller died ~~and~~ I was requesting his position away from John Kachins. even a different hour shift but yet still at the Airport and mainly working inside the Airport. I got nothing but the run-around.

Exhibit (2)

11. Are there any witnesses to the alleged discriminatory incidents? If yes, please identify them below and indicate what they will say. Add additional pages if necessary.

A. NAME any and everyone that worked in the JOB TITLE Same facilities that I worked. ADDRESS & PHONE NUMBER

B. NAME Same as above JOB TITLE ADDRESS & PHONE NUMBER

C. NAME Same as above JOB TITLE ADDRESS & PHONE NUMBER

12. Have you filed a charge previously in this matter with EEOC or another agency? YES ☒ NO ☐

13. If you have filed a complaint with another agency, provide name of agency and date of filing:

Worker Comp year 2000 or something also within the port of Oakland

14. Have you sought help about this situation from a union, an attorney, or any other source?

YES ☒ NO ☐ - If yes, from whom and when? Provide name of organization, name of person you spoke with and date of contact. Results, if any?

Local 790 didn't get no help at all (A pretend)  
Worker Comp at long but to no avail.  
and myself being in Pro Per.

Terrence Brown  
Signature

11-13-07  
Today's Date

If you have not heard from an EEOC office within 30 days of mailing this form, please call toll-free number shown on the letter accompanying this form. Provide the tracking number on the attached cover letter. Please make a copy of this form for your records before mailing.

PRIVACY ACT STATEMENT: This form is covered by the Privacy Act of 1974: Public Law 93-579. Authority for requesting personal data and the uses thereof are:

1. FORM NUMBER/TITLE/DATE. EEOC Intake Questionnaire (10/2006).
2. AUTHORITY. 42 U.S.C. § 2000e-5(b), 29 U.S.C. § 211, 29 U.S.C. § 626, 42 U.S.C. 12117(a)
3. PRINCIPAL PURPOSE. The purpose of this questionnaire is to solicit information in an acceptable form consistent with statutory requirements to enable the Commission to act on matters within its jurisdiction. When this form constitutes the only timely written statement of allegations of employment discrimination, the Commission will, consistent with 29 CFR 1601.12(b) and 29 CFR 1626.8(b), consider it to be a sufficient charge of discrimination under the relevant statute(s).
4. ROUTINE USES. Information provided on this form will be used by Commission employees to determine the existence of facts relevant to a decision as to whether the Commission has jurisdiction over allegations of employment discrimination and to provide such charge filing counseling as is appropriate. Information provided on this form may be disclosed to other State, local and federal agencies as may be appropriate or necessary to carrying out the Commission's functions. Information may also be disclosed to respondents in connection with litigation.
5. WHETHER DISCLOSURE IS MANDATORY OR VOLUNTARY AND EFFECT ON INDIVIDUAL FOR NOT PROVIDING INFORMATION. The providing of this information is voluntary but the failure to do so may hamper the Commission's investigation of a charge of discrimination. It is not mandatory that this form be used to provide the requested information.



**U.S. Equal Employment Opportunity Commission  
San Francisco District Office**

*Exhibit 4*

350 The Embarcadero  
Suite 500  
San Francisco, CA 94105  
(415) 625-5802  
TTY (415) 625-5610  
FAX (415) 625-5608

Respondent: PORT OF OAKLAND  
EEOC Charge No.: 555-2008-00141  
FEPA Charge No.:

January 23, 2008

Terry D. Brown  
P.O. Box 5279  
Oakland, CA 94605

Dear Mr. Brown:

This is with reference to your recent inquiry (an office visit, phone call, or correspondence) in which you alleged employment discrimination by the above-named respondent. The information provided indicates that the matter complained of is subject to one or more of the following laws:

- ☒ Title VII of the Civil Rights Act of 1964 (Title VII)
- ☒ The Age Discrimination in Employment Act (ADEA)
- ☒ The Americans with Disabilities Act (ADA)
- ☐ The Equal Pay Act (EPA)

The attached EEOC Form 5, Charge of Discrimination, was drafted as a result of the information provided. To enable proper handling of this action by the Commission you should:

- (1) Review the enclosed charge form and make corrections.
- (2) Sign and date the charge in the bottom left hand block where I have made an "X". The date of signature on the charge will not affect the jurisdiction date established in any original written complaint previously given to EEOC.
- (3) Return the signed charge to this office in the enclosed postage paid envelope.

Since charges should be processed within the time limits imposed by law, please complete these steps as soon as possible. Please call me at the number listed below if you have any questions. If you have to call long distance, please call collect.

- ☒ Please be aware that the EEOC will send a copy of the charge to the agency listed below as required by our procedures. If that agency processes the charge, it may require the charge to be signed before a notary public or an agency official. Then the agency will investigate and resolve the charge under their statute. If this occurs, section 1601.76 of EEOC's regulations entitles you to ask us to perform a Substantial Weight Review of the agency's final finding. To obtain this review, a written request must be made to this office within 15 days of receipt of the agency's final finding in the case. Otherwise, we will generally adopt the agency's finding as EEOC's.

California Department Of Fair Employment & Housing  
611 W. 6th St., Ste.1500  
Los Angeles, CA 90017

# EXHIBIT B



# EXHIBIT C

11-13-07  
Discrimination Exhibit (4)

(continued)

I spoke first our manager Karl Kuhlmann

I spoke first with our manager Karl Kuhlmann he said he did not know anything about what they're going to do. Talk to they're supervisor.

So, i talked to there facilities supervisor, he stated he didn't know what was going to happen. Go talk to human resources.

So i went. I go to main office. I can't recall names; but the next mention of the name will bring back memory..

DISCRIMINATION CONTINUED - Too this day.

5-7-2008  
not allowing a retire

first; I was removed from working at the Oakland Airport location after stating who, and what caused my on the job injuries.

Supposingly to get away from a hostile envirement.

same supervisor was removed from his position after the death of his immediat foreman Jerry Bizzel which many employees blamed his supervisor John Kaehms.

SECONED; year 2001. I reported for work duty with proper I.D for in and out you need your job i, d, to enter your job facilities. I was picked out not allowed in building. I entered building after being called to meeting. I was stopped by security and excorted out of the building right now you can't go any further. EVERONE else was allowed in building and any where else.

1998 i was physically assaulted by employee name Rick Lopp Nothing was never done. I feared for my job.

and 1999 i was mentally assaulted by <sup>two other</sup> employees named Victor Rodgrist <sup>Tempor</sup> and <sup>worker</sup> Dick Stillwell from garding facilities. over an issue John Kaehms. <sup>John Kaehms</sup> created. Leadman Billy Mayfield witnessed this himself. <sup>hire.</sup>

(\*) → THIRD; 2001 i unknowingly retired from my job with the Port of Oakland when i realized what i done i was admitted to herrit hospital via kaiser hospital. I've been trying to get my job back since this day. It feels like i never had any rights. Like not having the right to live, ifelt stripped of everything I could not believe that i retired from such a beautifull job less than 5 miles away from home. see Doctor report.

THANK YOU

*John Brown*

# EXHIBIT D

EEOC Form 161 (3/05)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Exhibit 6<sup>is</sup>

## DISMISSAL AND NOTICE OF RIGHTS

To: Terry D. Brown  
P.O. Box 5279  
Oakland, CA 94605

From: San Francisco District Office  
350 The Embarcadero  
Suite 500  
San Francisco, CA 94105



On behalf of person(s) aggrieved whose identity is  
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

555-2008-00141

Bryne A. Moore,  
Investigator

(503) 477-6056

## THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:



The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.



Your allegations did not involve a disability as defined by the Americans With Disabilities Act.



The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.



Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge.



Having been given 30 days in which to respond, you failed to provide information; failed to appear or be available for interviews/conferences, or otherwise failed to cooperate to the extent that it was not possible to resolve your charge.



While reasonable efforts were made to locate you, we were not able to do so.



You were given 30 days to accept a reasonable settlement offer that affords full relief for the harm you alleged.



The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.



The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.



Other (briefly state)

## - NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

**Title VII, the Americans with Disabilities Act, and/or the Age Discrimination in Employment Act:** This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit must be filed WITHIN 90 DAYS of your receipt of this notice; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a state claim may be different.)

**Equal Pay Act (EPA):** EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.

On behalf of the Commission

*Michael Baldonado*

*3.17.08*

Enclosures(s)

Michael Baldonado,  
Acting Director

(Date Mailed)

cc:

David L. Alexander  
Port Attorney  
PORT OF OAKLAND  
530 Water Street  
P.O. Box 2064  
Oakland, CA 94604